

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

Respondent,

v.

Jeremy P. Bakke

(your name)

Appellant.

No. 43525-0-II

STATEMENT OF ADDITIONAL
GROUND FOR REVIEW

STATE OF WASHINGTON
DEPUTY
B

FILED
COURT OF APPEALS
DIVISION II

2012 NOV - 7 AM 11:40

I, Jeremy P. Bakke, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

The 3 counts of P.S.P II WAS NOT TALKED ABOUT IN MY BRIEF OR THE R.C.W'S TO GO WITH IT 9.94A.525(5)(A)(I), 9.94A.525(5)(A), AND 9.94A.525(5)(I) WITH THE LAST R.C.W STATES: "COUNT AN ADULT CONVICTIONS" SERVED CONCURRENTLY" AS ONE OFFENSE NOT AS 3 LIKE THE COURTS DID IN MY CASE.

Additional Ground 2

THE BRIEF DOES NOT TALK ABOUT EXCLUDING PREJUDICIAL EVIDENCE, OR EXCLUDING IRRELEVANT EVIDENCE, AND EXCLUDING IMPROPER EVIDENCE OF A PRIOR FELONY CONVICTION. NONE OF THE WASHINGTON RULES OF EVIDENCE, RULE 403, RULE 402, RULE 401, RULE 404, RULE 609(A), 609(A)(2), AND THE REMOTE CONVICTIONS EXCLUDED 609(B)

If there are additional grounds, a brief summary is attached to this statement.

Date:

11/5/2012

Signature:

Jeremy Bakke

This Court May exclude prejudicial evidence

Washington Rules of evidence, Rule 403 gives the Court the Discretion to exclude evidence if the Probative value is "Substantially outweighed By the Danger of unfair Prejudice, confusion of the issues, or misleading, or By considerations of undue Delay, waste of time, or needless presentation of cumulative evidence." See *State v. Johnson*, 90 WASH. App 54, 62, 950 P2D 981 (Div. 2 1998) (error to admit prior Rape conviction in prosecution for Being felon in possession of firearm when Defendant stipulated to Being convicted felon AND evidence of prior conviction likely to provoke emotional Response from jury rather than Rational Decision); *Himango v. Prime time Broadcasting Inc.*, 37 WASH. App 259, 266, 680 P2D 432 (Div. 1 1984) (no Abuse of Discretion to exclude evidence of Plaintiff's prior consensual extramarital Sexual Activity as not probative on issue of Defamation, AND slight Probative value of evidence as to Damages Substantially outweighed By its potential for prejudice).

EXCLUDE Irrelevant evidence

Washington Rules of evidence, Rule 402 provides that But to exclude evidence that is irrelevant. Washington Rules of evidence, Rule 402 States that "evidence which is Not Relevant is Not Admissible." Relevant evidence is Defined By Washington Rules of evidence, Rule 401 as "evidence Having Any tendency to make the existence of Any fact that is of consequence to the Determination

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of the Action more probable or less probable than it would be without the evidence." See Bell v State 147 WASH 2D 166, 182, 52 P3D 503 (2002) ("to be relevant, evidence need not establish the proponent's case or theory in and of itself, but it must be at least a piece of the puzzle"); State v ACOSTA, 123 WASH App. 424, 433-39, 98 P3D 503 (Div. 2 2004) (error to allow expert to detail Defendant's criminal history when evidence was not probative of any issue and highly prejudicial to Defendant)

excluding improper evidence of a prior felony conviction

Washington Rules of Evidence, Rule 404 provides that but for three limited exceptions, evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion. WASHING Rules of Evidence, Rule 404(A); State v EVERYBODYTALKSABOUT, 145 WASH 2D 456, 468, 39 P3D 294 (2002) (Detectives' testimony concerning Defendant's leadership qualities was improper propensity evidence, even though such actions were not necessarily misconduct, the evidence was admitted for purposes of showing that Defendant acted in conformity with that trait). WASHINGTON Rules of Evidence, Rule 609(A) expressly allows the use of felony convictions to impeach the credibility of a conviction; however, such evidence is admissible only if the court first determines the probative value of admitting the evidence outweighs its prejudicial effect. See WASHINGTON Rules of Evidence, Rule 609(A); State v. King, 75 WASH App. 879, 904-905 878 P2D 466 (Div. 1 1994) (error for trial court to admit evidence that Defendant had been convicted of felony without

BALANCING prejudicial effect on the Record; "unless the prior felony involved Dishonesty or false Statement, in which case the conviction is per se ADMISSIBLE, the trial court must determine whether the evidence will be more useful in helping the jury to determine whether the witness is credible than it will be prejudicial to the Defendant").

Washington Rules of evidence Rule 609(A) also allows impeachment with prior convictions that involved Dishonesty or false Statement, without regard to its prejudicial effect. See Washington Rules of evidence, Rule 609(A); State v. Neal 117 Wash. App. 831, 843, 73 P3D 402 (Div. 1 2003), Aff'd 152 Wash. 2d 333, 96 P3D 974 (2004) (Defendant prior convictions for forgery, taking motor vehicle and attempted robbery crimes of Dishonesty under Washington Rules of evidence Rule 609(A)(2)).

In the present case, the evidence of the Plaintiff's prior conviction is in no way Relevant to any issue raised by the Plaintiff's complaint or the Defendant's Affirmative Defenses. The only possible Reason for Addressing this issue would be to place the Plaintiff in a bad light before the Court. There is a great Danger that these individuals will cast judgment on the Plaintiff's prior indiscretions (which, by the way, occurred more than 10 years ago. See Argument in the following paragraph).

To allow this evidence to be tossed about by the Defense, Absent any Arguable Relevancy, certainly will meet even the strictest Standard for exclusion under Washington Rules of evidence, Rules 403, 404, and 609 and the cases cited Above.

Remote Convictions May Excluded

The plaintiff's prior conviction is also too remote to add any relevant evidence to this case. Washington Rules of Evidence, Rule 609(B) expressly states that if more than ten years has passed since the conviction or of the release from the confinement imposed for that conviction, whichever is the later date, is inadmissible unless the court first determines that the probative value of the conviction supported by specific facts and circumstances, substantially outweighs its prejudicial effect. *State v. Russell*, 104 Wash App. 422, 434 16 P3d 664 (Div. 2 2001) (Court is required to balance probative value of remote convictions whether for felony or crime involving dishonesty, against convictions' prejudicial effect). See also *State v. Jones*, 117 Wash App. 221, 233, 70 P3d 171 (Div. 1 2003) 20 year-old forgery conviction irrelevant and inadmissible as impeachment when no showing that its probative value outweighed prejudice).

In the present case, the plaintiff's prior conviction occurred more than 10 years prior to the subject incident. During that time, the plaintiff has "cleaned up his act" considerably, with no subsequent felony convictions or involvement in any criminal activities. Not only does this speak to the lack of relevance in the present case but also addresses the huge potential for prejudice in that the conviction may improperly reflect on the plaintiff's credibility.

To avoid undue prejudice to the plaintiff, it is respectfully requested that all prior felony convictions 10 years and older be excluded from my criminal history.

Impeachment By evidence of conviction of Crime

time Limit.

evidence of conviction under this Rule is not Admissible if A period of more than 10 years has elapsed since the Date of the conviction or of the confinement imposed for that conviction, whichever is the Later Date, unless the Court Determines, in the conviction supported by specific facts and circumstances, Substantially outweigh its prejudicial effect. However, evidence of A conviction more than 10 years old as calculated herein is not Admissible unless the proponent gives to the Adverse party sufficient Advance written notice of intent to use Such evidence to provide the Adverse party with A fair opportunity to contest the use of Such evidence.

Juvenile Adjudications

evidence of Juvenile Adjudications is generally not Admissible under this Rule.

here's Some CASE LAW to go with Juvenile Adjudications.

J.H. 978 P2D 1121 NOS. 41486-1-I

"convictions of Juveniles"

Significant to the SchAAF Court Analysis was the fact that under the Juvenile Code An Adjudication Does not constitute conviction of A Crime (RCW 13.04.240) provides: An Order of Court Adjudging A Child Delinquent or Dependent under the provisions of (RCW 13.04.1) "shall in NO CASE Be Deemed A conviction of Crime".

thus, "An Act which would Be A Crime if committed By An Adult is not A Crime, And thus not A felony if committed By A Juvenile.

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All felonies committed Before Age 15 Are excluded from "CRIMINAL history" AS USED IN S.R.A.

STATE V HENDRICKS 14 P3D NOS 24283-4-II

Juvenile felonies "wash-out" for purposes of CALCULATING AN ADULT OFFENDER SCORE AFTER the offenders 23RD BIRTHDAY; AND Juvenile felonies committed when the DEFENDANT WAS less than 15 years old were NEVER INCLUDED in CALCULATING A SUBSEQUENT OFFENDER SCORE.

State V. Smith (2003) 75 P3D 986 118 WASH. APP 288

DEFENDANT'S juvenile ADJUDICATIONS were WASHED-OUT for the Purpose of Determining DEFENDANT'S OFFENDER SCORE. AND thus REMAND for imposition of A New Sentence with A correct OFFENDER SCORE WAS REQUIRED; DEFENDANT'S Juvenile ADJUDICATIONS OCCURRED Before he WAS 15 years old, the statute in effect when the offense WAS committed "WASHED OUT" the ADJUDICATIONS for the purpose of Determining AN ADULT OFFENDER SCORE. AND the AMENDMENTS to the statute DID NOT APPLY RETROACTIVELY to "REVIVE" the ADJUDICATIONS. Defined AS including: A DEFENDANT'S OTHER PRIOR CONVICTIONS in juvenile court if: the DEFENDANT WAS 15 years of Age or older At the time the offense WAS committed. AND with respect to prior juvenile CLASS B AND C felonies or Serious Traffic offenses the DEFENDANT WAS Less than 23 years of Age At the time of the offense for which he or she is Being Sentenced WAS COMMITTED.

HENDRICKS 103 WASH. APP 732, 14 P3D 811

HENDRICKS ADJUDICATIONS for pre-Age 15 offenses - which HAD NEVER COUNTED in the first place HAD "WASHED OUT" HAD NOT BEEN "REVIVED" AND SHOULD NOT HAVE BEEN COUNTED.

Benjamin Scott Jones 88P3D424 NOS 30232-2-II

A) the prior Juvenile ADJUDICATION Does not Count if the Defendant committed the underlying Juvenile offense Before Age 15, PROVIDED that he or She ATTAINED Age 15 Before July-1-1997.

B) the prior Juvenile ADJUDICATION Does not Count if the Defendant committed the underlying Juvenile offense while Age 15 or older PROVIDED that he or She ATTAINED Age 23 Before July-1-1997

When the 1997 Amendment took effect on July-1-1997; AND SHOULD NOT HAVE BEEN INCLUDED in the offenders score for their current ADULT offenses ADDITIONALLY Jones ADJUDICATIONS for pre-Age 15 offenses - which HAD never counted in the first place HAD "washed-out" HAD NOT BEEN "REVIVED" AND SHOULD NOT HAVE BEEN COUNTED

2000 Amendment to the S.R.A - SUBStitute Senate Bill 6182 States:

IN MARCH of 2000, the 56th Washington State Legislature PASSED SUBStitute Senate Bill 6182 ("SSB 6182") which AMENDED Chapter 9.94A RCW effective June-8-2000, to provide: Any sentence imposed under this chapter SHALL BE DETERMINED IN ACCORDANCE with the LAW in effect when the current offense WAS committed

§3505.05 Table of Amendments to Wash-out-Rules.

is the effective State Statute effect DATE of 1/4/2012 AND it STATES:

Juvenile offenses Do not count if the conviction occurred Before July-1-1997 AND the offender WAS younger than 15 At the time of the offenses.

Personal Restraint of
William Joseph Nichols, Petitioner
85 P3D 955 No. 22099-1-III
Court of Appeals of Washington
Division-3 panel five March 19/2004

that Language Does Not Modify the italicized clause,
which is plainly a continuity interruption provision.
Misdemeanors are not relevant to the "trigger" clause
because it is only felony convictions that are subject
to wash-out.

The state contends the only reasonable reading of the
statute is the wash-out applies to persons who were not
incarcerated for five years and did not commit any felonies.
The court read this to me on page 20 of my transcripts and
agreed on it on page 21 of the transcripts.

Pursuant to a felony conviction expresses clear legislative
intent that non-felony convictions do not "trigger" a new
start date for the five year wash-out period.

I have went from 2001 to 2009 with out Being incarcerated
or Being convicted of a felony.

The state statute says that a person has to be convicted for a
felony for the wash-out to "trigger" a new start date. I was convicted on
1/9/09 for a felony that is well over 5 years for not being
convicted of a felony, and its 5 years of not being
incarcerated for any crime as well.

The state contends that on 6/7/06 I was found guilty of a
felony with is not true the 1/9/09 conviction has a 08' case
number not a 06' case number so I went 5 years
without being incarcerated from any felonys and any crimes
from 2001 to 2009.

9.94A.345 Timing

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Any Sentence imposed under this Chapter shall be Determined in Accordance with the Law in effect when the Current offense was committed (2000 C2652.)

MR BAKKE committed no new felonies within five years of his last Release for felony incarceration. the focus turns to the meaning of the undefined clause "in the community" the ordinary AND usual meaning of community is: "A neighborhood, vicinity, or locality."

for A prior Conviction to Washout An offender must spend five consecutive felony free years in the Community 830 P2D 379

MR BAKKE would be "out of the community" AND the wash-out period interrupted for Any Arrest AND Detention the Statute plainly Requires more-A felony conviction.

Jail time for A misdemeanor conviction must interrupt the wash-out period Because it is not time spent in the community.

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AND for my Juvenile ADJUDICATION'S Pre Age 15, I turned 15 ON 11/9/1992 So for my:

Burglary II (2 counts)

CLARK COUNTY CASE NO. 90-8-00359-6 Sentenced on June-15-1990 this is Before July-1-1997 AND I WAS UNDER the Age of 15 At the time of the offense, I WAS ONLY 13 years OLD At the time of Both offenses AND I AM 35 years OLD NOW.

Residential Burglary

CLARK COUNTY CASE NO. 90-8-00996-9

Sentenced DATE of 1/18/1991

this is Before July-1-1997 AND I WAS UNDER the Age of 15 At the time of the offense.

P.S. P II

CLARK COUNTY CASE NO. 91-8-00036-6

Sentencing DATE of 1/18/1991

this is Before July-1-1997 AND I WAS UNDER the Age of 15 At the time of the offense.

The State Statute 3505.05 TABLE of Amendments to Wash-out-Rules.

3505.05 LAWS OF 1997 Ch. 338 §§ 2, 5 (effective July-1-1997) States:

JUVENILE offenses DO NOT COUNT if the conviction occurred Before July-1-1997 AND the offender WAS younger than 15 At the time of the offenses.

AS you can see I WAS UNDER the Age of 15 for the 3 offenses ABOVE AND they SHOULD NOT COUNT ON my S.P.A.

AND S^S 3504 PRIOR CONVICTION - VALIDITY
STATES:

UNDER FORMER LAW, JUVENILE CONVICTIONS WOULD NOT
COUNTED AFTER THE PERSON TURNED 23 OR IF THE PERSON
WAS UNDER 15 AT THE TIME OF THE FORMER OFFENSE.

ON 4/21/1998 I WAS SENTENCED TO THREE COUNTS OF
P.S. P II AND THEY WAS RAN CONCURRENTLY TOGETHER.

P.S. P II (3 COUNTS)

ALL HAVE THE SAME CLARK COUNTY CASE NO OF
97-1-01277-5

AND ALL HAVE THE SAME SENTENCING DATE OF
4/21/1998

AND ALL 3 COUNTS WERE RAN CONCURRENTLY TOGETHER

9.94A.525 (5)(A)(I)

PRIOR OFFENSES WHICH WERE FOUND UNDER
RCW 9.94A.589(I)(I) TO ENCOMPASS THE SAME CRIMINAL
CONDUCT SHALL BE COUNTED AS ONE OFFENSE.

9.94A.525 (5)(A)

THE CURRENT SENTENCING COURT MAY PRESUME
THAT SUCH OTHER PRIOR OFFENSES WERE NOT
THE SAME CRIMINAL CONDUCT FROM SENTENCES
IMPOSED ON SEPARATE DATES

9.94A.525 (5)(I)

COUNT ALL ADULT CONVICTIONS "SERVED CONCURRENTLY"
AS ONE OFFENSE.

All 3 counts of the p.s.p II's All have the same Sentencing Date of 4/21/1998 AND All HAVE the SAME CRIMINAL CONDUCT By Being RAN Concurrent together on the same Sentencing Date So the 3 counts of p.s.p II Sentencing Date of 4/21/1998 SHOULD only count as one offense.

AND the state took off my Record was the ATTEMPTED INDECENT LIBERTIES CASE NO 90-8-00008-2 BECAUSE it fell under LAWS of 1990 Ch.3 S⁵706 (effective July-1-1991) THAT STATES:

JUVENILE Sex offense DO NOT count if the conviction occurred Before July-1-1990 AND the offender was younger than 15 At the time of offense.

I WAS ONLY 13 ON the DATE of 2/22/1990 THAT IS Before July-1-1990.

AND the UNAUTHORIZED use motor vehicle WAS NOT COMPATIBLE to TMV without permission & so the courts took THAT off my Record

The courts TALK ABOUT D.O.S.A BUT they DO NOT say THAT I took A Screening for it AND me AND MR DAVID SWANSON talked ABOUT the Sex offense I HAD in 1990 AND He told me JUVENILE ADJUDICATIONS DO NOT effect me getting D.O.S.A AS A ADULT. the courts DID NOT even LOOK in to it they yst Disappointed AND it IS something I need, Multnomah County D.A Kevin Demer put me in to Drug treatment over that So why would I Not Be eligible over in Washington here is A copy of the D.O.S.A Screening. AND A copy of S⁵3505.05 AS well

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CONFIDENTIAL

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2012 APR 11 PM 3:18

SCOTT G. WEBER, CLERK
CLARK COUNTY



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

RISK ASSESSMENT REPORT

REPORT TO: The Honorable Robert A. Lewis
Clark County Superior Court
OFFENDER NAME: JEREMY PUTNAM BAKKE
AKA: Jeremy Putnam Jordan
CRIME: Attempted Burglary-Second
Degree
DATE OF OFFENSES: 12/17/10
CURRENT LOCATION: Clark County Jail
LAST ADDRESS:
TELEPHONE NUMBER:

SENTENCE DATE: 04/16/12
DATE OF REPORT: 3/28/12
DOC NUMBER: 737768
CAUSE NUMBER: 11-1-00015-0
COUNTY: Clark
DOSA ELIGIBLE: ☒ YES ☐ NO
OAA: ☒ YES ☐ NO
ATTORNEY: Alfred A. Bennett

I certify or declare under penalty of perjury of the laws of the state of Washington that the following statements are true and correct to the best of my knowledge and belief based on the information available to me as of the date this report is submitted.

Submitted By:

David Swanson CCO-III

David Swanson
Community Corrections Officer III

Date

Approved By:

Ed Hall

Ed Hall
Community Corrections Supervisor

4/11/12

Date

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Distribution: ORIGINAL - Court COPY - Prosecuting Attorney, Defense Attorney, File

Risk Level - unknown

Offender Information

Prefix	County	Cause Number	Sentence Information
			Crime Description
06	Clark	11-1-00015-0	Attempted Burglary-Second
<p>According to Clark County Sheriff's Office incident report # 10-18157 by Officer Brendan McCarthy on 12/17/2010 Hazel Dell Tire Factory manager Richard Mosley reported a male trespassing in the rear, locked area behind the store. It was found that the individual had removed the lock to enter the secured area and had left the scene in a blue Ford Windstar, Washington license plate 693XJM, registered to a Veronica Minjarez. VPD had stopped the van in May 2010, at which time Jeremy Bakke was driving the vehicle. Bakke was later identified by Mosley from his most recent booking photo.</p>			

Offender Risk/Need Summary

Criminal History

See "Declaration of Criminal History" chart on the next page.

Education/Employment Narrative

Bakke attended Hudson Bay High School in Vancouver, Washington until the 12th grade. He did not complete the 12th grade due to fighting and was sent to a juvenile institution. Bakke did receive his GED about eight months ago at Inverness Jail in Oregon. Bakke attended Centralia Community College in 1996 for a flagging certificate, and Clark Community College in 2001 for GED classes; he did not complete the entire course for his GED. Bakke has not been in the military. Bakke worked for Pacific Paper Incorporated as an operator from February of 2005 until April of 2009 when he was laid off. Prior to this he worked for J and B Plastering as a plaster from April of 2001 until February of 2005. He worked at Hewlett-Packard as a line supervisor from October of 1998 until March of 1999.

Financial Narrative

Bakke reported that he does not have problems managing his money. Bakke had fairly steady employment from 2001 to 2009 when he was laid off from his job. He supported himself mainly from wages he earned during this period of time. He has never declared bankruptcy. He does not have a mortgage. He says he does not have child support payments. He reports that he has been on unemployment assistance. He said he has a savings account, however he does not have much money in in this account at this time.

Family/Marital/State Registered Domestic Partnership Narrative

Bakke was born to Shirley Jordan and Ted Fowler on November 9, 1976 in Portland, Oregon. Bakke reports never knowing his biological father. His mother's maiden name is Bakke. George Jordan has been his stepfather since he was two and considers him his father. His mother Shirley and stepfather have been together for 33 years and have been married for over 25 years. He said his stepfather is a "good man" and he had a normal upbringing. He has one half-brother, Josh Jordan, age 25. Bakke reports having a good relationship with his family growing up. Bakke has never married, and has two biological twin daughters, Jaymi and Shantay, both of whom are fourteen years old. The mother of the twins, Shamanta Smith, took off with them and Bakke has not seen them for a number of years.

Accommodation Narrative

Bakke's last residence was at the Roadway Inn, 9201 NW. Vancouver Mall Drive (near Vancouver Mall) for approximately the last nine months. After his release from prison he plans to stay with his parents at 4211 NE. 164 Avenue in Vancouver, Washington or possibly at an Oxford House in Portland, Oregon.

Leisure/Recreation Narrative

Bakke states that he enjoys working out with friends in his spare time. He enjoys buying baseball cards on craigslist. His favorite sports are football and basketball. He said he played semi pro football for the Vancouver Vipers here in Vancouver, Washington. He is not a member of any social organization. Bakke enjoys action/suspense movies and John Grisham books. He said prior to incarceration he would spend most of his free time with his girlfriend's three children. He is a member of City Harvest Church

in Hazel Dell and considers himself a Christian.

Companions Narrative

Bakke likes to spend time with his children and stepchildren, and considers his family to be very important to him. He states that Veronica used to be his closest friend but since she put out a protection order against him, his mother is now the person he is closest to. He states that he is a bit of a loner and is quite picky about whom he chooses as friends. He says he considers his mother his best friend.

Alcohol/Drugs Narrative

On 3/29/2012, Jeremy Putnam Bakke completed the Department of Correction's Chemical Dependency Drug Dependence Screening Tool (see attached). The purpose of the tool is to assist in determining if the offender may 'benefit' from chemical dependency treatment; the form is either marked CD for benefitting from a treatment program or NCD for not benefitting based upon the information the offender has self-reported on the screening tool. In most cases, the Community Corrections Officer is not a chemical dependency expert and cannot recommend for or against treatment; we can only provide a copy of the results of the screening tool and give the Court information the defendant has voluntarily provided regarding a desire to participate in the DOSA program.

The result of the self-report drug screening does indicate Bakke may benefit from a formal, long-term treatment program.

Bakke has an extensive history of substance abuse. He first consumed alcohol at the age of 15. He said he did not consume alcohol very often in the last 12 months before incarceration. He said that alcohol has been a problem at times. He said he would drink three or four times a week and that would usually be a 6 to 12 pack of Coors beer. He first tried marijuana at the age of 15, using it 3-4 times per week. In the last year, Bakke described his marijuana use as about three or four times a week. He has tried heroin one time at the age of 34. He has used cocaine several times over the years. He has used heroin and cocaine together as a "speedball" on a couple of occasions. Bakke has tried LSD three or four times between the ages of 16 and 17. Bakke started using methamphetamine at the age of 31. He uses methamphetamine on a daily basis. Methamphetamine is his drug of choice. He believes he is addicted to methamphetamine. Bakke has tried the synthetic drug called MDMA or commonly known as "Molly." When using drugs, he uses with others instead of using alone. Bakke has never used IV drugs. He has never sold drugs. Bakke was enrolled in treatment for substance abuse with the Multnomah County, Oregon drug treatment program. Bakke stated that he believes his substance abuse problem is extremely serious at this point. Bakke feels that most of his problems have resulted from his substance addiction issues.

Emotional/Personal Narrative

Bakke has never seen a mental health professional. Bakke has no formal diagnosis for any mental health issues. He is not on any prescribed medication for mental health issues. He has never had a plan to commit suicide. He has never attempted suicide. Bakke feels that he "might have a bit of depression"

at this point. He has concerns about possible mental health issues, however he said he feels stable at this time.

Attitudes/Orientation Narrative

Bakke was appropriate and cooperative with this interview. Bakke feels he has been treated fairly by the criminal justice system. Bakke feels that he has received a fair shake in life. He feels that "people put themselves into the position their in." He has a strong desire to participate in a substance abuse program in order to gain the tools necessary to avoid future contact with the criminal justice system. He was forthcoming and had an honest insight into how his substance abuse issues have affected his life. He knows that addressing his drug addiction is important for his success. When asked what it would take for him to be successful again Bakke answered "to be able to go to drug treatment and to learn the elements and tools to be able to not do drugs again." He said "I'm not going to let drugs tear me down again like that." He said he is determined to follow the rules of supervision and the DOSA program.

Victim Statement/Issues and Community Concerns

No Victim Statement provided.

The community concern centers on a person who has an extensive criminal record and strong addiction to methamphetamine. Bakke appears to realize that he has a severe substance abuse problem. He is expressing a desire to participate in the DOSA program. Bakke's successful completion of a substance abuse treatment program is critical to curbing the possibility of continued recidivism. The Drug Offender Sentencing Alternative will give Bakke the best chance of maintaining a substance abuse free life.

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within 5 years since the last date of release from confinement or entry of judgment and sentence.^{1.05} Unlike the other wash-out rules, this rule does not require that the offender spend any particular time in the community without committing new offenses.

Computation of wash-out becomes complicated when there have been legislative changes to the wash-out rules. The Washington Supreme Court has held that statutory amendments will not be applied "retroactively" so as to "revive" prior offenses that had already washed out.² The Legislature responded to this decision by enacting a provision that sentences under the SRA are to be determined in accordance with the law in effect when the current offense was committed.³ The Supreme Court nevertheless held that this statute did not indicate any clear intent to apply changes in wash-out rules "retroactively."^{3.05}

As a result, a wash-out determination requires a review of prior versions of the statute and the effective date of any changes. If a prior offense would wash-out under a prior version of the statute, counsel must determine when the wash-out period was completed. If that completion date occurred prior to the effective date of an amendment changing the wash-out rules, the prior offense should not be counted. A list of relevant amendments and their effective dates is set out in § 3505.05.

The same analysis has also been applied to changes in offender scoring rules that do not involve wash-out. For example, under former scoring rules, juvenile convictions entered on the same date counted as one offense. This rule was repealed in 1997.^{3.10} It nevertheless remains in effect for scoring convictions that occurred prior to the repealer.^{3.15}

A review of historical scoring rules is unnecessary for current offenses committed on or after June 13, 2002. Effective that date, the SRA was amended to provide that convictions that were not counted under prior versions of the act should nevertheless be counted if the current version of the act requires counting those convictions.^{3.20}

^{1.02}West's RCWA 9.94A.525(2)(f).

^{1.03}State v. Moeurn, 170 Wash. 2d 169, 240 P.3d 1158 (2010).

^{1.05}West's RCWA 9.94A.525(2)(e), 46.61.6055(13)(b).

²(Replace footnote with the following):

State v. Cruz, 139 Wn.2d 186, 985 P.2d 384 (1999).

³(Replace footnote with the following):

West's RCWA 9.94A.345, enacted by Laws of 2000, ch. 26, § 2. The purpose section of this statute said that it was "intended to cure any am-

biguity that might have led to" State v. Cruz, 139 Wn.2d 186, 985 P.2d 384 (1999). Laws of 2000, ch. 26, § 1.

^{3.05}State v. Smith, 144 Wn.2d 665, 672, 30 P.3d 1245, 1248 (2001).

^{3.10}Laws of 1997, ch. 338, § 5 (effective July 1, 1997).

^{3.15}State v. Perry, 110 Wn.App. 554, 560-61, 42 P.3d 436, 440 (2002); see In re Jones, 121 Wn.App. 859, 870-71, 88 P.3d 424, 431 (2004) (summarizing wash-out rules for juvenile offenses).

^{3.20}West's RCWA 9.94A.525(18), as amended by Laws of 2002, ch. 107, § 3;

State v. Varga, 151 Wn.2d 179, 86 P.3d 139 (2004).

(Change text between footnotes 4 and 5 to read as follows):

The wash-out period is interrupted by any confinement for a felony, including confinement for a community supervision violation.⁵

⁵State v. Blair, 57 Wn.App. 512, 83 P.3d 1054 (2004); State v. Ervin, 789 P.2d 104 (1990).
In re Higgins, 120 Wn.App. 159, 169 Wash. 2d 815, 239 P.3d 354 (2010).

(Add after footnote 6):

Confinement for a non-felony offense does not interrupt the "wash-out" period.^{6.05}

^{6.05}State v. Ervin, 169 Wash. 2d 815, 239 P.3d 354 (2010). West's RCWA 9.94A.525(2).

n. 10.

(Replace footnote with the following):

(Add at end of section):

When a defendant is convicted of vehicular homicide based on driving while intoxicated, 24 months are added to the standard range for every prior conviction for driving while intoxicated and various other offenses.¹¹ This computation is not affected by "wash-out."¹²

¹¹West's RCWA 9.94A.510(7).

¹²State v. Deman, 107 Wn.App. 98, 26 P.3d 296 (2001), review denied, 145 Wn.2d 1016, 41 P.3d 482 (2002). Under the statute setting penalties for driving while intoxicated, prior convictions older than 7 years are not

counted. West's RCWA 46.61.5055. This statute as well does not affect the standard range computation for vehicular homicide. State v. Holgren, 106 Wn.App. 477, 23 P.3d 1132, review denied, 145 Wn.2d 1013, 37 P.3d 290 (2001).

§ 3505.05 Table of amendments to wash-out rules [New]

1. Laws of 1990, ch. 3, § 706, (effective July 1, 1990):

Amendment: Eliminated wash-out for sex offenses.¹

Previous law: Wash-out periods for sex offenses were the same as for other crimes: 10 years for class B felonies, or 5 years for class C felonies. Juvenile offenses were subject to additional wash-out rules. No juvenile offenses counted towards the offender score if the offender was younger than 15 when the prior offenses was committed. Class B or C juvenile offenses only counted if the offender was younger than 23 when the *current* offense was committed.

Effect of Previous Law: Sex offenses may be subject to wash-

(2)

out if the conviction occurred prior to July 1, 1980 (for class B felonies) or July 1, 1985 (for class C felonies). Juvenile sex offenses do not count if the conviction occurred before July 1, 1990, and the offender was younger than 15 at the time of the offense. Juvenile sex offenses that are class B or C felonies do not count if the offender was born before July 1, 1967.

2. Laws of 1995, ch. 101, §§ 1, 2 (effective July 23, 1995):

Amendment: Eliminated application of the special juvenile wash-out rules to juvenile serious violent offenses.

Previous law: Juvenile offenses (other than sex offenses) did not count towards the offender score if the offender was younger than 15 when the prior offenses was committed. Class B or C juvenile offenses (other than sex offenses) only counted if the offender was younger than 23 when the *current* offense was committed.

Effect of Previous Law: Juvenile serious violent offenses do not count if the conviction occurred before July 23, 1995, and the offender was younger than 15 at the time of the offense. Juvenile serious violent offenses that are class B or C felonies do not count if the offender was born before July 23, 1972. These rules do not apply if the juvenile offense was a sex offense.

3. Laws of 1995, ch. 316, § 1 (effective July 23, 1995):

Amendment: Allowed wash-out only if the offender had spent 5 or 10 years in the community without "committing any crime that subsequently results in a conviction."²

Previous law: Allowed wash-out if the offender had spent the necessary period without "being convicted of any felonies." Wash-out could thus occur even if, during the wash-out period, the offender (a) committed misdemeanors or gross misdemeanors or (b) committed felonies but was not convicted until after the period expired.

Effect of Previous Law: Class B felonies may wash-out if the offender was last released from confinement before July 23, 1985, and thereafter spent 10 years in the community without being *convicted* of any *felonies*. Class C felonies may wash-out if the offender was last released from confinement before July 23, 1990, and thereafter spent 5 years in the community without being *convicted* of any *felonies*.

→ **4. Laws of 1997, ch. 338, §§ 2, 5 (effective July 1, 1997):**

Amendment: Eliminated special scoring rules for all juvenile offenses.³

Previous law: Juvenile offenses (other than sex offenses or serious violent offenses) did not count towards the offender score if the offender was younger than 15 when the prior offenses was committed. Class B or C juvenile offenses (other than sex offenses) only counted if the offender was younger than 23 when the *current* offense was committed. Juvenile convictions entered on the same day counted as one offense.

Effect of Previous Law: Juvenile offenses do not count if the conviction occurred before July 1, 1997, and the offender was younger than 15 at the time of the offense. Juvenile offenses that are class B or C felonies do not count if the offender was born before July 1, 1974. These rules do not apply if the juvenile offense was a sex offense or a serious violent offense. Multiple convictions for juvenile offenses count as one offense if the convictions were entered on the same day prior to July 1, 1997.

¹The effect of this amendment was addressed in *State v. Cruz*, 139 Wn.2d 186, 985 P.2d 384 (1999).

²The effect of this amendment was addressed in *State v. Hern*, 111 Wn.App. 649, 653–56, 45 P.3d 1116, 1118–20 (2002).

³The effect of the abolition of juvenile wash-out rules was addressed in *State v. Smith*, 144 Wn.2d 665, 30 P.3d 1245 (2001). The effect of the abolition of the “same day” rule was addressed in *State v. Perry*, 110 Wn.App. 554, 560–61, 42 P.3d 436, 440 (2002).

§ 3506 Prior convictions—Wash-out worksheet

(In subsection B, change first paragraph to read as follows):

List in chronological order all periods of confinement for felony convictions. For all crimes (**including misdemeanors and gross misdemeanors**), list the date of the offense as both a “date of confinement” and “date of release.” The crime-free period is the time between the date of release and the next date of confinement.

§ 3508 Prior convictions—Multiple offenses

n. 1.

(Replace footnote with the following):
West’s RCWA 9.94A.525(5)(a).

n. 2.

(Replace footnote with the following):
West’s RCWA 9.94A.525(5)(a)(ii).

n. 3.

(Replace footnote with the following):
West’s RCWA 9.94A.525(5)(a)(i).

n. 5.

(Replace footnote with the following):
West’s RCWA 9.94A.525(5)(a)(ii).

n. 7.

(Replace footnote with the following):
West’s RCWA 9.94A.525(5)(b).

n. 8.

(Change citation to the following):
West’s RCWA 9.94A.525(5)(a)(i).

§ 3509 Prior convictions—Out-of-state convictions and Washington convictions under former law

n. 1.

(Replace footnote with the following):
West’s RCWA 9.94A.525(3).

n. 3.

(Replace footnote with the following):

State v. McCorkle, 88 Wn.App. 485, 495, 945 P.2d 736, 742 (1997), aff’d, 137 Wn.2d 490, 973 P.2d 461 (1999).

(Replace second and third paragraphs):

Only the elements of the crime must be equivalent, not potential defenses.^{5.5} A foreign conviction can be treated as a

these are the things the judge shot down and did not even look in to State Statute 3505.05 LAWS of 1997, the D.O.S.A. Screening, State Statute 3504, R.C.W. 9.94A.525(5)(A)(II), 9.94A.525(5)(A), 9.94A.525(5)(I) or any evidence to exclude prejudicial prior felony convictions, AND the court did not look in to the fact that I was conviction free for more than five years the court just shot it all down when it should have applied to me.

I thank you for your time in this matter

Gincerely
Jeremy Bakisē

Date: 11/5/12